(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

W.P.NO. 2308 OF 2004

BETWEEN

G.S.Mahalwar S/o Shri R.S.Mahalwar, aged about 53 years, District Ayurved(Medical)Officer , posted at Dantewada, District Dantewada (CG).

P.R. No. 2122/04
Presented by Shri Dinesh Tekhamchandani
dated 19-7-04

PETITIONER

A N D

1. The State of Chhattisgarh, Through the Secretary Department of Health and Family Welfare, Mantralay, D.K.S. Building,Raipur.

2. Dr. Satish Kumar Choubey S/o Shri B.L.Choubey, aged about 52 years, occupation Ayurved Medical Officer, Govt.Ayurved Dispensary Nemedh district Dantewada .

3. The Collector, Dantewada, District Dantewada (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(72)

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17-09-2004

Shri Awadh Tripathi, Counsel for the petitioner.

Shri V.V.S. Murthy, Dy. Advocate General for the State/respondents No. 1 and 3.

Shri R.N. Jha, Counsel for respondent No.2.

Heard.

2. By the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order dated 14-7-2004 (Annexure – P/14) passed by respondent No.1, whereby the petitioner has been directed to hand over the charge to respondent No.2.

3. The brief facts of the case are that the petitioner is working as a District Ayurved (Medical) Officer, who was appointed in service on 19-5-1979, the gradation list of the same is Annexure – P/1. The name of the petitioner is shown at S.No.104. Admittedly, respondent No.2 Dr. Satish Kumar Choubey, is junior to the petitioner and his name finds place

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(73)

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -25	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

at S.No.259 in the gradation list. As per order dated 26-8-2002 (Annexure–P/2), respondent No.2 was given the charge of officiating Superintendent-Cum-District Ayurved Officer, though he was posted at Nemda. Thereafter vide Annexure – P/3, dated 24-12-2002, petitioner Gowri Shankar Mahalwar, who was at Raipur, was posted at Government Ayurved Hospital, Beji, District Dantewada. Since the petitioner was senior to respondent No.2, hence, as per Annexure – P/7 dated 13-8-2003, the charge from respondent No.2 was directed to be taken over and handed over to the petitioner. As against this order, respondent No.2 had preferred a writ petition bearing W.P.No.2560/2003 before this Court. The said petition was disposed of vide order dated 27-8-2003 with a direction to the petitioner to make a representation before respondent No.1, Under Secretary, Ministry of Health and Family Welfare Department, Government of Chhattisgarh and directed the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(74)

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

State/respondent No.1 to consider the representation of petitioner Dr. Satish Kumar Choubey.

4. Learned counsel for the petitioner submitted that the petitioner herein was not noticed. It is also submitted that the representation made by Dr. Satish Kumar Choubey has been dismissed, then he filed another writ petition bearing No.3683/2003. The said petition is listed today for analogous hearing. There is no order of stay in that case. Dr. Choubey had submitted fax representation through his counsel. Pursuant to that fax representation, order dated 14-7-2004, Annexure-P/14 has been passed and charge has been directed to be taken over from petitioner Gowri Shankar Mahalwar and handed over to Dr. Satish Kumar Choubey, which is the subject matter.

5. When this petition (W.P. No. 2308/2004) came up for hearing on 18th August, 2004, this Court mentioned these facts and directed to list the case alongwith the connected

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(75)

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

matter i.e. W.P. No. 2308/2004 and W.P. No. 3683/2003, that is how both the petitions are listed today for analogous hearing.

6. Normally, the senior officer has to be appointed as Superintendent-cum-District Ayurved Officer. In that view of the matter, admittedly petitioner Gowri Shankar Mahalwar is senior to respondent No. 2 Dr. Satish Kumar Choubey. This fact has not been disputed either by the State counsel or any other respondent. Therefore, the order dated 14-7-2004, Annexure –P/14 has to be set aside.

7. Shri R.N. Jha, learned counsel for respondent No. 2 stated that he does not want to press W.P. No. 3683/2003. However, he made a statement that the petitioner in W.P. No. 3683/2003 namely Dr. Satish Kumar Choubey, may kindly be allowed to make a representation for his posting in a District where he is senior to others so that Dr. Choubey may get advantage of his seniority. That prayer is not opposed by

[पीछे देखिये

(76)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

any of the respondents nor Shri Awadh Tripathi, learned counsel for the petitioner in W.P. No. 2308/2004. This submission is recorded.

8. Having considered the facts and circumstances of the case, material on record and the fact that the petitioner in W.P. No. 2308/2004 is senior to respondent No. 2, the order dated 14-7-2004, Annexure P/14 is set aside.

9. Dr. Choubey, petitioner in W.P. No. 3683/2003, is at liberty to make a detailed representation for change of place of posting before the competent authority of the respondents along with a copy of this order, within 15 days, and on such representation being filed, the competent authority of the respondents to consider the same on its own merits subject to availability of post and other relevant circumstances.

10. With the aforesaid observations, these petitions (W.P. NO. 2308/2004 and W.P. No. 3683/2003) stand disposed of.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(77)

आदेश पत्रक

मामला क्रमांक WP 2308/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11. Consequently M.W.P.Nos.2057/2004 and 3326/2003 also stand disposed of. 12. Copy of this order be placed in W.P.No.3683/2003. Certified copy as per rules. Sd/- Fakhruddin Judge	

Gowri